



REPUBLIC OF KENYA



**Kwanzwi & another v Bwoyi & 7 others (Civil Appeal E161 of 2024)
[2026] KEHC 2946 (KLR) (3 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 2946 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E161 OF 2024
REA OUGO, J
MARCH 3, 2026**

BETWEEN

DAVID EBITONYI KWANZWI 1ST APPELLANT

MARTIN NYONGESA WASIKE 2ND APPELLANT

AND

DAVID BWOYI 1ST RESPONDENT

BENARD WASIKE 2ND RESPONDENT

ROBERT WANGILA 3RD RESPONDENT

BENSON WAFULA 4TH RESPONDENT

THOMAS WAFULA 5TH RESPONDENT

CHRISTINE BWOYI 6TH RESPONDENT

JOSTINE MALABA 7TH RESPONDENT

DAMARIS WAFULA 8TH RESPONDENT

*(Being an appeal from the judgment and decree of Hon. V. Yator PM
delivered on the 24/07/2024 in the Webuye SPMCC No. 68 of 2019)*

JUDGMENT

1. The appellants sued the respondents vide a plaint dated 28/03/2019 seeking the following reliefs:-
 - a. An order restraining the defendants from entering into or accessing the compound of Muji PEFA Church.



- b. An order compelling the 1st and 2nd defendant to surrender properties belonging to the said church to the 2nd plaintiff.
 - c. Any other reliefs the court deems fit.
 - d. Costs of the suit
2. The respondents entered appearance and filed a statement of defence dated 20/05/2021, in which they denied the appellants' allegations, challenged them to strict proof, and further argued that the court lacked jurisdiction to hear the case, as the Church's constitution provided a dispute-resolution process that the appellants had not yet exhausted.
 3. In its decision delivered on 24/07/2024, the trial court found that the appellants lacked locus standi to file suit, held that they had failed to exhaust the dispute resolution mechanism provided in the church constitution, and dismissed the suit with costs awarded to the respondents.
 4. Dissatisfied with the said Judgment/decree, the appellant lodged this appeal via the Memorandum of Appeal dated 25/11/2024 and raised seven (7) grounds of appeal as follows:
 - a. That the learned trial magistrate grossly erred in law in evaluation of the evidence before her.
 - b. That the learned trial magistrate erred in fact and in law in failing to properly frame the issues for determination in the suit before her.
 - c. That the learned trial magistrate erred in fact and in law by adjudicating on issues not raised by the parties for consideration; the issue of creation of districts.
 - d. That the learned trial magistrate out rightly expressed bias by solely considering the church constitution tendered by defendants therein.
 - e. That the learned trial magistrate made a mistake by failing to acknowledge the mediation attempts by parties both at the church level and at the court annexed mediation.
 - f. That the learned trial magistrate failed to consider the directions given by her sister court Hon. M. Munyekenye SPM during the hearing of applications over the issue of properties to be surrendered and the issue of capacity to sue.
 - g. That the learned trial magistrate misapprehended the law by failing to determine the case on a balance of probability.
 5. The parties agreed to resolve the appeal through written submissions. The appellant submitted that they had presented their work identity cards in their list of documents as proof of their status as officials of the church. Meanwhile, the respondents contended that the appellants did not follow the PEFA Constitution when excommunicating them from the church and creating districts. The court, however, concluded without any evidence and without the respondents seeking court intervention. It was argued that the trial court reached an incorrect conclusion by relying on the wrong section of *the Constitution* regarding conflict resolution, when the correct provisions related to Article II (10) (c) of the PEFA Constitution. The 2nd appellant was also denied access to Muji PEFA church, where he had been posted, in violation of Article 32 of *the Constitution* of Kenya. Additionally, the evaluation of evidence by the trial court demonstrated clear bias, as it omitted crucial evidence from the 2nd appellant, who was a key witness. Furthermore, the court improperly addressed issues related to the creation of districts, which were not subject to determination and were contrary to Article 50 of *the Constitution*.



6. The respondent submitted that the trial court properly evaluated and analysed the evidence on record, and that both parties testified that they were bound by the Church Constitution, which provides mechanisms for resolving disputes. That church property can only be held by registered church officials or trustees, and that the appellants failed to prove that they were such, further failing to indicate which properties they wished to be surrendered to them. That the creation of additional districts by the appellants did not conform to the provisions of the Church Constitution, as admitted in their own testimony, and that this issue arose from the pleadings presented before the court. That the trial court properly framed the issues in the suit from the pleadings before it. That the trial court considered the Church Constitution presented to it, and as such, there was no bias. That further, there was no evidence of Church mediation as alleged by the appellants, and that the correspondences did not amount to mediation resolution. That no directions were given regarding the properties to be surrendered by the respondents, and that the respondents did not breach any provisions of *the Constitution*.

Analysis And Determination

7. As this is a first appeal, the Court is duty-bound to reassess the evidence from the trial court independently and arrive at its own findings and conclusions (see *Peters vs. Sunday Post (1978) E.A. 424*).
8. The appellants' case before the trial court was that they and the respondents were members of PEFA Church. That following the split of Webuye District into three districts in 2018, disputes arose over the location of Muji PEFA Church, culminating in a meeting of the Bungoma South Regional Council held at Masaba PEFA Church. It was agreed at the meeting that the 2nd appellant be transferred from Welemba Church in Webuye East District to Muji Church in Webuye Central. However, when he arrived at the station on 17/02/2019, he was denied entry by the respondents, who became rowdy and locked the church entrance.
9. In support of their case, the appellants called two witnesses. Pw1 David Ebitonyi Kwanzwi adopted his witness statement dated 28/03/2019 as his evidence in chief, wherein he reiterated the averments in the plaint. During cross-examination, Pw1 testified that the Church Constitution governs the relationships of members within the church and that the establishment of the new districts in Webuye was illegal, as it went against the Church Constitution. He further stated that he did not possess the minutes of the Board Meeting that expelled the respondents as members of the church, nor any subsequent communication on the matter from the regional office. He also mentioned that he was not a trustee or official of the church but still had locus to bring the suit on behalf of the church.
10. Pw2 Martin Nyongesa Wasike adopted his statement dated 28/03/2019 as his primary evidence. He testified that he was a pastor at Muji PEFA Church but was expelled from the church by the respondents after being transferred there. During cross-examination, Pw2 stated that there were two groups within Muji PEFA Church, with him leading one of them. He further explained that the leadership of PEFA Church asked them to withdraw the case from court and that no committee meeting authorised them to appear in court. He mentioned that he is a registered leader of the PEFA Church, although he had not received any licence, and that the Church Constitution guides the relationships among congregants.
11. The respondents denied the assertions made by the appellants and challenged them to strict proof. They argued that the court lacked jurisdiction to hear the case, as the Church's constitution included a dispute resolution process that the appellants had not yet completed. They also argued that, contrary to



the appellants' claim in their plaint, a church district cannot be formed or created by the constitutions of four churches.

12. In support of their case, the respondents called one witness. Dw1 David Bwoyi adopted his statement dated 20/05/2021 as his evidence in chief and stated that the minutes annexed by the appellants did not include any agenda items concerning Muji PEFA Church. During cross-examination, Dw1 testified that he is a deacon at Muji PEFA Church, that the division of the district was contrary to their constitution, and that on 11/03/2019 he and others were suspended from the church. He further stated that he was appointed pastor by the mission from 2019. In re-examination, Dw1 confirmed that any member of the church is bound by *the constitution*, which sets out how members should abide, and that anyone is free to raise concerns about any violation of *the constitution*.
13. Based on the above, the trial court reached its decision. Consequently, the only issue to be determined is whether the trial court erred in dismissing the appellants' suit.

Analysis And Determination

14. I have carefully considered the evidence adduced in the trial court, the grounds of appeal, and the rival submissions. When dismissing the appellants' suit, the trial court stated as follows:

“...No evidence was tendered by the plaintiffs herein to the effect that they exhausted all the dispute resolution mechanisms in place before coming to court. For reasons that the two constitutions tendered are not the same, lack of locus on the part of the plaintiffs to file suit and for coming to court directly without exhausting the available avenues in conflict resolution as per *the constitution*, the court finds the suit not merited, the same is dismissed with costs to the defendants.”

15. The trial court dismissed the appellants' suit because they did not make use of the Church's internal dispute resolution procedures. Essentially, the court ruled that, based on the evidence presented, it lacked jurisdiction to hear the case and that the appellants should have first exhausted the internal mechanisms established under the PEFA Church.
16. The doctrine of exhaustion is a fundamental principle of Kenyan administrative law. In *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR, the Court of Appeal held that when *the Constitution* or a statute provides a dispute resolution process, that process must be observed. Subsequent jurisprudence has broadened the principle to include internal and contractual mechanisms, including those regulating religious institutions.
17. In *Geoffrey Muthinja Kabiru & Another v Samuel Muguna Henry & 1756 Others* [2015] eKLR, the Court of Appeal reaffirmed that if an internal dispute resolution mechanism is available, it must be fully utilised before approaching the court. This helps safeguard institutional autonomy and prevents unnecessary judicial intervention.
18. My view is that when a party is dissatisfied with or suspicious of the internal process, such dissatisfaction or suspicion does not suffice to override the exhaustion requirement. The correct approach is to follow the internal procedure and then challenge any unfairness based on an established factual record (see the case of *Susan Kalondu Ondumwanzui v Pastor John Ngumi & 23 Others* [2018] KEHC 6468 (KLR)).
19. The Supreme Court in *Mumba & 7 others (Sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions) v Munyao & 148 others (Suing on their own behalf and on behalf of the plaintiffs and other members/*



beneficiaries of the Kenya Ports Authority Pensions Scheme)) [2019] KESC 83 (KLR) endorsed this principle, holding that even constitutional grievances may, in appropriate cases, be subjected to internal mechanisms unless exceptional circumstances are demonstrated.

20. The authorities mentioned above emphasise the importance the Courts give to the exhaustion of internal dispute mechanisms before approaching the Court. It concerns the Court's jurisdiction to hear the case and should be addressed first, as jurisdiction is fundamental, (see the case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR).
21. Both the appellants' and the respondent's witnesses testified that the Church had its own internal dispute resolution mechanisms. Both parties submitted copies of the Church's Constitution; however, the appellants challenged the trial court's judgement on the basis that, amongst other things, the trial magistrate relied on *the Constitution* provided by the respondents at their expense. The appellants' assertions are not correct. At page 3 of the judgement, in paragraph 3, the trial court stated that it compared the two constitutions and noted that they were similar but differed in terms of citations of Articles, wording, and pagination.
22. I have examined the two Church Constitutions supplied by the appellants and respondents, noting that both contain provisions for Conflict Resolution in Article 6, Sub Article 7.
23. Consequently, the appellants should have utilised the Church's Conflict Resolution mechanisms. The appellants did not demonstrate any exceptional circumstances justifying their failure to utilise the Church's internal dispute resolution procedures.
24. Accordingly, I find that the appellants were in breach of the Doctrine of Exhaustion, and the trial court therefore had no jurisdiction to entertain their claim. The trial court correctly dismissed the appellants' claim. I uphold that finding and refrain from considering any other issue raised by the appellants to avoid prejudging the decision to be made on those issues should the appellants choose to pursue their claim in the appropriate forum.
25. In conclusion, I find that this appeal lacks merit and I proceed to dismiss it with costs to the respondents. It is so ordered.

DATED, SIGNED AND DELIVERED AT BUNGOMA ON THIS 3RD DAY OF MARCH 2026.

R. OUGO

JUDGE

In the presence of:

Appellants in person

Mr. Wamacho h/b Mr. Athung'a for the 1st to 8th Respondents

Wilkister - C/A

